

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BOBBY DWAYNE LUCKY,

Plaintiff,

v.

SANDRA HAYNES, *et al.*,

Defendants.

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CIVIL ACTION NO. 3:12-CV-2609-B

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

In this action, *pro se* Plaintiff Bobby Dwayne Lucky has sued sixty Defendants arising in part from a food poisoning incident and his hospitalization and treatment. On December 21, 2012, the undersigned issued an Order of Reference (doc. 27), referring this case to United States Magistrate Judge Paul D. Stickney for pretrial management.

On April 29, 2013, Magistrate Judge Stickney issued his Findings, Conclusions, and Recommendation (doc. 65), recommending that the Court *sua sponte* dismiss Plaintiff's claims against the following Defendants without prejudice under Federal Rule of Civil Procedure 4(m): Physician NFN Nafrauri; Donald Sweeney; Sylvia J. Glenn; J. Stewards; Sargeant NFN Hogg; J. Lopez; B. Bateman; T. Coleman; A. Wallace; Stephen Peck; W. Autery; R. Powell; B. Howard; Charles Adams; Margo Green; J.P. Guyton; Richard A. Trinci; Kathryn Bell; Samuel Seals; James B. Thomas; Donald Henry; Jana Henry; Billy J. Reese; Jeana M. Baker; Michael M. Jennings; Timothy R. Fitzgerald; Chuma Anaduaka; Bruce W. Smith; M. Lastrapes; Clara Bell; Katherine A. McClure; Shirley Fairchild; Elvira Rodriguez; Helen Hipp; Dorothy Wright; A. Shabaaz; B. Kinard; K.

Jenninsche; R. Trinci; and Chandra Chandler. The recommendation was based on the fact that Plaintiff had been instructed to serve those defendants, but failed to properly do so within the deadline under Rule 4(m) or adequately show cause why he missed the deadline.

After receiving an extension of time to respond to the Findings and Recommendation, on May 24, 2013, Plaintiff filed his Objection (doc. 68). In his Objection, Plaintiff admits the accuracy of the facts and analysis underlying the Findings and Recommendation, including that none of the named Defendants recommended for dismissal have been properly served and that Plaintiff did not show good cause for the failure to properly and timely serve these Defendants. Doc. 68, Obj. at 3-4. Instead, Plaintiff makes the following three objections to the Findings and Recommendation: (1) Plaintiff objects to the denial of his request to use the United States Marshal to serve each defendant; (2) Plaintiff requests that he be given the opportunity to re-file his claims with the assistance of counsel and the opportunity to file amended pleadings since the proposed dismissal is without prejudice; and (3) Plaintiff requests that he be permitted to re-file his Complaint to narrow it to the food poisoning issue instead of retaliation. *Id.* at 5.


This Court reviews *de novo* the recommendations of a Magistrate Judge involving dispositive issues. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Plaintiff's first objection regarding the denial of his request for the United States Marshal to execute summons is untimely. The Findings and Recommendation (doc. 65) at issue here did not decide whether the United States Marshal should serve the summons, rather the Magistrate Judge's Order (doc. 12) of October 10, 2012 disposed of that matter. Plaintiff did not timely raise an objection to that Order and may not do so here. Accordingly, Plaintiff's first objection is **OVERRULED** as unrelated to the Findings and Recommendation (doc. 65) and as an untimely objection to the October 10, 2012 Order (doc. 12).

Plaintiff's second and third objections are related in that each seeks relief in the form of an order permitting Plaintiff to file amended pleadings but neither addresses the analysis or conclusions of the Findings and Recommendation (doc. 65). Accordingly, those objections are **OVERRULED**. The Court will not consider Plaintiff's request to file amended pleadings at this time, as such a request should be set out in a separate motion that comports with the Federal Rules of Civil Procedure and the Local Rules. Further, any motion to amend pleadings must be addressed to the Magistrate Judge, to whom the case has been referred for pre-trial management.

The Court has undertaken a *de novo* review of the Magistrate Judge's Findings, Conclusions, and Recommendation (doc. 65) and Plaintiff's Objection (doc. 68). Concluding that Plaintiff does not object to the analysis or the facts of the Recommendation and concluding that Plaintiff has failed to adequately and timely serve numerous Defendants as required by Federal Rule of Civil Procedure 4, the Court **OVERRULES** Plaintiff's Objection and **ADOPTS** the Findings, Conclusions, and Recommendation of the Magistrate Judge.

SO ORDERED.

SIGNED: May 28, 2013.



JANE J. BOYLE
UNITED STATES DISTRICT JUDGE